



**State of New Jersey**  
DEPARTMENT OF THE TREASURY  
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**Blossom A. Peretz**  
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CHRISTINE TODD WHITMAN  
Governor

March 29, 1996

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**VIA EXPRESS MAIL**

Office of the Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

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Re: In the Matter of Implementation of Section 302  
of the Telecommunications Act of 1996

Open Video Systems (CS Docket No. 96-46)

TO THE HONORABLE COMMISSION:

Enclosed please find an original and nine copies of Comments to be filed with the Commission in the above-referenced matter. Please time/date stamp the additional copy and return it to the undersigned in the enclosed, stamped envelope. In addition, two additional copies are marked as "Extra Public Copy" pursuant to the FCC's Public Notice of March 22, 1996.

Respectfully submitted,

Blossom A. Peretz, Esq.  
Ratepayer Advocate

Encl.

Cc: Larry Walke, FCC Cable Services Bureau  
2033 M Street, N.W. Room 408A Washington, D.C. 20554

International Transcription Services, Inc. 2100 M St., N.W. Suite 140  
Washington, D.C. 20037

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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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	)	
Implementation of Section 302 of	)	CS Docket No. 96-46
the Telecommunications Act of 1996	)	
	)	
Open Video Systems	)	

Comments of the Division of the Ratepayer Advocate, State of New Jersey

The above-referenced FCC proceeding raises a number of complex, important and far-reaching issues affecting the future competitive video marketplace for both consumers and telecommunications providers. The New Jersey Division of Ratepayer Advocate (hereinafter "Ratepayer Advocate") requests that the Commission consider the principles raised herein so that "open video systems" ("OVS") can truly provide meaningful, competitive video alternatives to consumers and will address the needs of state/local communities.

The New Jersey Division of the Ratepayer Advocate represents and protects the interests

of all utility consumers--residential, small business, commercial and industrial, to ensure that they receive safe, adequate and proper utility service at affordable rates that are just, reasonable and nondiscriminatory. The Ratepayer Advocate was established in 1994 by Governor Christine Todd Whitman's Reorganization Plan. See 26 N.J.R. 2171 (June 6, 1995). It is a statutory intervenor in cases where cable operators seek to alter their rates or services through filings made at the New Jersey Board of Public Utilities. We are commenting on those issues raised in this docket which impact on securing consumer access to new services at affordable rates.

#### Issues Involving the Public, Educational and Government Access Channels

Congress has recognized the critical importance of public, educational and government ("PEG") access channels along with broadcast mandatory carriage. Citizen access to cable television and other multichannel programming systems enhances educational opportunities and interaction between people and communities--an important facet of the growing information "superhighway." The RPA encourages innovations, such as OVS, which have the potential to advance access to information through public access to its channels. Local franchise authorities must continue to dedicate PEG access channels in sufficient numbers to meet community needs and interests. There must be assurances, under the new OVS regulatory scheme, that PEG access programming remains available to the public on the basic tier of services or OVS package and that sufficient resources remain available for public access operations.

Under the Telecommunications Act of 1996 (the "Act"), OVS operators will be exempt from a local franchise requirement. As OVS operators reap the benefits of offering new and

expanded services to various communities, the RPA opines that operators must still return a benefit to those communities. The Act provides vehicles, such as PEG access, for OVS operators to serve their new communities. A communications provider has an obligation to serve members of the community where it operates.

Furthermore, where an OVS operator becomes a competitive provider of complete telecommunications packages, the myriad of service offerings should be made available to the entire community so that there are no information “have-nots” on the “superhighway” in that community. As the Ratepayer Advocate argued in Comments to the New Jersey Board of Public Utilities on the issue of “Universal Service” in the Board’s on-going Local Competition Docket (BPU Docket TX 95120631), “[c]onnection to advanced services should be provided in all regions, and consumers in all parts of the state, including rural, insular, and high-cost areas, should be able to connect to telecommunications networks and have access to information services.” Similar policies to maximize subscribership by all segments of society should apply to open video system offerings.

With those principles in mind, the RPA recommends first, that OVS operators afford consumer access to PEG channels and channel location/programming information (i.e. program guides, menus or directory listings) in a non-discriminatory manner. Adequate information regarding PEG access must be made available to OVS subscribers although the precise means may be left to the operator. This is consistent with the mandates of Subsection 653(b) (1) (E) of the new Act which seek “to prevent discrimination in favor of an open video system operator or its affiliates with regard to the information (or the way information) is provided to subscribers for

selecting programming on open video systems.” See FCC rulemaking text at paragraph 48.

Where PEG access channels are functioning in the OVS service area, the RPA supports a requirement that the OVS operator interconnect to such programming feeds at its headend. The FCC should permit negotiation of sharing PEG expenses, duties, training and facilities at the local level, i.e. between the cable system, the OVS operator, the PEG provider, and the franchise authority. There should also be no preemption of franchise authority to structure a separate, equivalent PEG access service requirement with the OVS operator. In instances of disputes, settlements should be achieved utilizing alternative dispute resolution procedures at the state or local level. The franchise authority should retain authority to file a complaint with the FCC for an OVS operator’s breach of the Section 653(c) mandates.

In paragraph 58 of the rulemaking, the FCC requests data on any technical or cost constraints affecting delivery of PEG channels to certain areas and information on how cable systems currently handle differing PEG access requirements. The FCC should closely review this information and industry experience to support an interpretation of the statutory requirements of Section 653(c) which will not foreclose either the continued viability of current and future PEG operations or the growth of OVS in all parts of the states, notwithstanding remote geographic locations.

#### Operational and Policy Issues Affecting Open Video Systems

The legislative history of the 1996 Telecommunications Act focuses on bringing increased competition to the video programming and telephony markets. See, e.g.,

Telecommunications Act of 1996 Conference Report, S. Rep. 104-230 at 178 (February 1, 1996).

The creation of the OVS regulatory scheme, stripped of Title II requirements, was crafted to entice telephone companies to enter the video marketplace. Id. The freedom of telephone companies to provide video programming/delivery services will further promote a competitive market among existing cable companies for video subscribers. The Ratepayer Advocate supports the policy goal that competition should result in lower prices, greater consumer choice and more rapid technological innovation and deployment.

However, competition does not exist without adequate consumer information. In the marketplace of the future , consumers must be fully informed and educated as to their opportunities to choose among competing video and telephony providers. The Ratepayer Advocates supports federal and state initiatives to ensure these consumers receive adequate, ongoing disclosure of rates, rate changes, and the terms and conditions of service. States should not be preempted from extending consumer protection standards and unfair marketing rules applicable to traditional cable to OVS service providers. The provision of sufficient, clear, and truthful information for effective decision making is critical, in our view, to the operation of a competitive market.

In order for a true competitive market to flourish from the start, the rules of market entry must be equivalent for both telephone companies and cable operators . In light of merging technologies, both industries should have the option of providing video services through the OVS model. A level regulatory playing field is necessary in order to bolster competition.

However, the FCC must recognize the sanctity of the cable franchise agreement through the end of any remaining franchise terms. The FCC must also encourage the need for continued cooperation of the cable operators with local communities over continued, mutually-agreeable contract obligations to service those communities.

Although OVS operators will administer the allocation of channel capacity on their systems, the FCC and the states cannot relinquish their important roles in overseeing and enforcing nondiscriminatory access to the OVS platform. There are several areas where states should have an oversight role and serve as arbiter of contractual disputes. For example, the FCC in paragraph 14 of the rulemaking text seeks comment on what procedures the Commission should adopt for an OVS operator to follow in notifying video programming providers that it intends to establish an open video system. Any notice or filing of contracts should be issued publicly through the FCC's release of a Public Notice and a filing period. Publication in a trade publication and/or legal notification in local newspapers could also be required. State public utilities commissions and municipalities should be copied on all filings since tariff review or further investigation by a state may be necessary to insure that the initial allocation of carriage space is nondiscriminatory. New Jersey has public notice procedures which should be followed.

The FCC should consider establishing an enrollment period (i.e., 60-90 days) during which time carriage applications would be tendered for review and approval at the state level. The OVS operator's failure to abide by the procedural requirements or its failure to satisfy a state's concerns should result in a delay in certification or the revocation of an OVS certification,

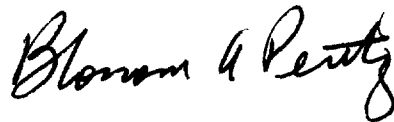
based upon complaint and a due process hearing. In sum, in order for OVS to function as a truly “open” system, the public notice procedures described above will ensure that the OVS operator will not be permitted to restrain any entrant, including cable operators, from purchasing space on the system, in accordance with specific channel allocation or channel capacity rules adopted in this proceeding.

Although this filing does not address the many technical issues raised when there is a dichotomy between analog and digital offerings, the Ratepayer Advocate requests that the FCC specify that OVS operators make available to its subscribers the necessary customer premises equipment (“CPE”) enabling them to have access, at a minimum, to all must-carry channels, including PEG access. Ease of access to the PEG access channels is critical and will also be enhanced by a channel placement acceptable to the PEG programming provider.

Lastly, the FCC is charged, under subsection 653(b)(1)(A) of the Act to “ensure that the rates, terms and conditions” for the carriage of video programming on an open video system “are just and reasonable and are not unjustly or unreasonably discriminatory”. Although there must be sufficient market flexibility for OVS operators to establish pricing mechanisms, at both the federal and state level there should be broad standards and procedural outlets for reviewing any tariff terms or complaints regarding the terms and conditions of carriage for unaffiliated programmers. The use of ADR, alternative dispute resolution, procedures should also be encouraged and supervised by state public utility commissions in the first instance.

In sum, the Ratepayer Advocate respectfully requests that the Commission consider the views expressed herein in its consideration of this Docket and in its further drafting of specific rules on these issues.

Respectfully submitted,

A handwritten signature in cursive script, reading "Blossom A. Peretz". The signature is written in black ink and is positioned above the printed name.

Blossom A. Peretz, Esq.,  
Ratepayer Advocate

Dated: March 29, 1996